

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

SUSAN BIGGS BY AND THROUGH  
CONSERVATOR, PARENT and NEXT FRIEND,  
HAROLD BIGGS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:15cv452TSL-RHW

EDWIN C. LEGRAND III,  
PAUL A. CALLENS, and  
JOHN DOES 1-10

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of defendants Edwin C. LeGrand III and Paul A. Callens pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss on Eleventh Amendment immunity and other grounds. Plaintiff Susan Biggs has not responded to the motion and the time for responding has passed. For the reasons that follow, the court concludes that the motion is well taken and should be granted.

Background

As alleged in the complaint, plaintiff Susan Biggs is a severely mentally ill and mentally handicapped woman who, since August 1995, has been civilly committed, in total, over twenty times to Mississippi's several mental hospitals. Ms. Biggs, by and through her appointed conservator, parent and next friend Harold Biggs, filed the present action under 42 U.S.C. § 1983 and Mississippi state law against Edwin LeGrand, former Executive Director of the Mississippi Department of Mental Health (MDMH),

and against Paul Callens, Director of the North Mississippi State Hospital (NMSH), in their official and individual capacities, and against a number of John Doe defendants, asserting that defendants' decisions concerning her treatment resulted to her "being denied her right to appropriate treatment, minimally adequate habilitation, and her historic liberty interests, including safety, all in violation of her rights under the Fourteenth Amendment of the United States Constitution and Article 3, Section 14 of the Mississippi Constitution." As relief, plaintiff demands compensatory and punitive damages, together with costs and attorney fees.

Defendants LeGrand and Callens have moved to dismiss plaintiff's § 1983 and state law claims against them in their official capacities on the basis that the claims are barred by Eleventh Amendment immunity.<sup>1</sup> They argue that plaintiff's § 1983 claim against them in their official capacities should be dismissed for the additional reason that state officials acting in their official capacities are not "persons" for the purposes of maintaining a § 1983 claim. Lastly, they assert that the Eleventh Amendment and the Mississippi Tort Claims Act both bar plaintiff's

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<sup>1</sup> At this time, defendants do not seek dismissal of plaintiff's federal claims against them in their individual capacities. Those claims are the subject of a separate motion to require a specific reply by plaintiffs to defendants' qualified immunity defense.

claims against them for monetary damages in their official and individual capacities. Defendants are correct on all these points and their motion to dismiss these claims will therefore be granted.

#### Eleventh Amendment Immunity

Defendants seek dismissal of plaintiff's § 1983 official capacity claims and their state law official and individual capacity claims based on Eleventh Amendment immunity. The Eleventh Amendment to the United States Constitution "bars an individual from suing a state in federal court unless the state consents to suit or Congress has clearly and validly abrogated the state's sovereign immunity." Perez v. Region 20 Educ. Serv. Ctr., 307 F.3d 318, 326 (5th Cir. 2002) (citing U.S. CONST. amend. XI; College Sav. Bank v. Florida Prepaid Post secondary Educ. Expense Bd., 527 U.S. 666, 670, 119 S. Ct. 2219, 144 L. Ed. 2d 605 (1999)). It represents a jurisdictional bar that, absent waiver, prohibits a federal court from hearing a claim against a state and its agencies and instrumentalities, whether based on federal or state law and regardless of the nature of the relief sought. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 122, 104 S. Ct. 900, 79 L.Ed.2d 67 (1984). See also McDonald v. Board of Miss. Levee Comm'rs, 832 F.2d 901, 906 (5th Cir.1987) (quoting Crane v. Texas, 759 F.2d 412, 415 (5th Cir. 1985)) ("[E]leventh Amendment immunity is a jurisdictional issue that 'cannot be

ignored, for a meritorious claim to that immunity deprives the court of subject matter jurisdiction of the action.'"). The Eleventh Amendment also bars suits against state government officers for monetary relief where the effect of the suit will be that damages will be paid from the state treasury. Leland v. Mississippi State Bd. of Registration For Prof'l Engineers & Land Surveyors, 841 F. Supp. 192, 195 (S.D. Miss. 1993), aff'd, 35 F.3d 559 (5th Cir. 1994). Consequently, if MDMH and NMSH are legally considered agencies or instrumentalities of the State of Mississippi, then LeGrand and Callens, in their official capacities, are immune from plaintiff's claims for monetary damages.<sup>2</sup> See id.

The Fifth Circuit has established a six-factor test to help determine whether a suit against a governmental agency should be considered a suit against the state:

1. Whether the state statutes and case law view the agency as an arm of the state;
2. The source of the entity's funding;
3. The entity's degree of local autonomy;
4. Whether the entity is concerned primarily with local as opposed to statewide, problems;

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<sup>2</sup> Ex Parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908) represents a narrow exception to Eleventh Amendment immunity for suits that allege a violation of federal law that are "brought against individual persons in their official capacities as agents of the state, and the relief sought must be declaratory or injunctive in nature and prospective in effect." Aguilar v. Tex. Dep't of Crim. Justice, 160 F.3d 1052, 1054 (5th Cir. 1998). Plaintiff herein seeks only monetary relief so this exception has no applicability.

5. Whether the entity has the authority to sue and be sued in its own name; and
6. Whether the entity has a right to hold and use property.

Clark v. Tarrant Cty., 798 F.2d 736, 744-45 (5th Cir. 1986).

These factors are not of equal importance; the second is the most important, the last two the least. See Hudson v. City of New Orleans, 174 F.3d 677, 681 (5th Cir. 1999). Moreover, not all of the factors must be satisfied for the court to conclude that MDMH and NMSH qualify as state agencies for Eleventh Amendment purposes. Id.

This court previously recognized in Scanlon v. Dept. of Mental Health, 828 F. Supp. 421, 424 n.4 (S.D. Miss. 1993), that the MDMH is a state agency entitled to Eleventh Amendment immunity. See id. (concluding that Eleventh Amendment precluded action against MDMH). While the court's opinion in Scanlon did not expressly address the Clark factors, it is clear those factors support the court's conclusion. First, MDMH is plainly regarded as an arm of the state for purposes of state law. It was created by state statute and is managed and controlled by the State Board of Mental Health. See Miss. Code Ann. § 41-4-2 - § 41-4-7; see also E. Mississippi State Hosp. v. Adams, 947 So. 2d 887, 890 (Miss. 2007) ("MDMH was created as a department of the State in Miss. Code Ann. Section 41-4-5 (Rev. 2005)."). Moreover, MDMH enjoys sovereign immunity under state law. In this regard, the

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 *et seq.*, which creates a limited waiver of sovereign immunity, defines "State" to include "the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority, or other instrumentality thereof,...." Miss. Code Ann. § 11-46-1(j). MDMH undeniably falls within this definition. See Miss. Farm Bureau, 99 So. 3d at 783 (noting applicability of MTCA immunity to MDMH).<sup>3</sup>

MDMH is statutorily tasked with providing mental health services for all persons of the state in need of such services, Miss. Code Ann. § 41-4-2, so that its concern extends statewide and is not merely local. See Miss. Farm Bureau Cas. Ins. Co. V. Miss. Dept. of Mental Health, 99 So. 2d 781, 783 (Miss. Ct. App. 2012) (MDMH "is the state agency responsible for providing services for the mentally ill .... persons in Mississippi"). As defendants note, while there is no state statute expressly authorizing MDMH to sue or be sued in its own name, MDMH has been a regular state court litigant. See, e.g., Mississippi Dep't of Mental Health & Ellisville State Sch. v. Shaw, 45 So. 3d 656 (Miss. 2010); Mississippi Dep't of Mental Health v. Hall, 936 So.

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<sup>3</sup> While the MTCA is a limited waiver of sovereign immunity, it explicitly preserves Eleventh Amendment immunity. See Miss. Code Ann. § 11-46-5(4).

2d 917 (Miss. 2006). Property used by MDMH is held in the name of the State of Mississippi, with the acquisition and disposition of such property subject to control by the State Board of Mental Health and the Mississippi Department of Finance and Administration. See Miss. Code Ann. § 41-4-7; 41-19-255. Lastly, and most importantly, MDMH is funded by the Mississippi Legislature, through appropriation of general and special funds. As MDMH is an arm of the state, plaintiff's claims against LeGrand in his official capacity are barred by the Eleventh Amendment.<sup>4</sup>

The same is true for NMSH. NMSH was created by state statute to provide for the acute care treatment of persons with mental illness who have been committed to state care by a chancery court. See Miss. Code. Ann. § 41-19-251; § 41-19-253. It is operated by MDMH, under the direction of the State Board of Mental Health, and itself an arm of MDMH. Cf. Ellisville State Sch. v. Merrill, 732 So. 2d 198, 199 (Miss. 1999) (noting that Ellisville State School was an arm of MDMH). As such, it is an arm of the State. Cf. May v. N. Texas State Hosp., 351 F. App'x 879, 880 (5th Cir. 2009)

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<sup>4</sup> There is no arguable basis for finding a waiver of Eleventh Amendment immunity. Section 1983 does not abrogate the State's Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979). The Mississippi Tort Claims Act expressly preserves the State's Eleventh Amendment immunity on claims brought in federal court. See Miss. Code Ann. §§ 11-46-3(1), 11-46-5(4). Finally, the State has not engaged in conduct that could be construed as a waiver.

(holding that North Texas State Hospital, as a division of a state agency, the Texas Department of Mental Health and Mental Retardation, a state agency, is therefore itself a state agency for the purpose of Eleventh Amendment immunity); Sessions v. Rusk State Hosp., 648 F.2d 1066, 1069 (5th Cir. 1981) (holding that Rusk State Hospital, exclusively controlled by the Texas Department of Mental Health, was a state agency for Eleventh Amendment purposes).<sup>5</sup>

Section 1983 "persons" requirement

Section 1983 provides a cause of action against "[e]very person who, under color of any statute ... of any State ... subjects, or causes to be subjected, any citizen ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws...." Defendants submit that even if Eleventh Amendment immunity did not bar plaintiff's § 1983 claim against them in their official capacities, defendants would be entitled to dismissal of this claim on the basis that they are not "persons" under § 1983 and are thus not amenable to suit. In Will v. Michigan Department of State Police, the Supreme Court held

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<sup>5</sup> The court notes, too, that by statute, NMSH is designated as a "state agency" for purposes of federal law. See Miss. Code Ann. § 41-19-263 ("The North Mississippi State Hospital ... [is] designated as [a] state agenc[y] for carrying out the purposes of any act of the Congress of the United States of America existing on July 1, 1995, or enacted at any time after July 1, 1995, that pertains to mental illness.").



that states and state agencies are not "persons" under § 1983. 491 U.S. 58, 66-70, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). The Court further held that "a suit against a state official in his or her official capacity ... is a suit against the official's office," and therefore, "it is no different from a suit against the State itself." Id. at 71, 109 S. Ct. 2304. Thus, since under Will, neither a state nor its officials acting in their official capacities are 'persons' under § 1983," id., 109 S. Ct. 2304, plaintiff's federal claims against defendants in their official capacities must be dismissed.

#### MTCA - Individual Capacity Claims

Defendants contend that the MTCA applies to, and immunizes defendants with respect to plaintiff's individual capacity state law claims. The MTCA "provides the exclusive civil remedy against a governmental entity and its employees for acts or omissions which give rise to a suit." Bosarge v. Miss. Bureau of Narcotics, 796 F.3d 435, 444 (5th Cir. 2015) (quoting City of Jackson v. Sutton, 797 So. 2d 977, 980 (Miss. 2001)). "The MTCA provides the following general waiver of sovereign immunity: '[T]he immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived....'" Id. (quoting Miss. Code Ann. § 11-46-5(1)). The MTCA "shift[s] virtually all

tort liabilities from governmental employees to the state or political subdivision," providing that "no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties." In re Foust, 310 F.3d 849, 863 (5th Cir. 2002) (quoting Miss. Code Ann. § 11-46-7(2)). Under the Act, "employees may be sued only as an official representative of the political subdivision." Id.; see also In re Foust, 310 F.3d 849, 863 (5th Cir. 2002). Only fraud, malice, libel, slander, defamation, and criminal offenses fall outside the "course and scope" of employment and create personal liability, id., but plaintiff has not pled any such actions by defendants. Accordingly, the MTCA precludes plaintiff's claims against LeGrand and Callens in their individual capacities.

#### Conclusion

Based on the foregoing, it is ordered that the motion of defendants LeGrand and Callens to dismiss plaintiff's federal claims against them in their official capacities, and to also dismiss plaintiff's state law individual capacity claims against them, is granted.

SO ORDERED this 21<sup>st</sup> day of January, 2016.

/s/Tom S. Lee

UNITED STATES DISTRICT JUDGE